

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 77-123 are pending after entry of the amendments set forth herein.

Claims 77-123 were examined. Claims 115-123 were rejected. Claims 77-114 were allowed.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Priority

In the Official Action of April 4, 2007, the Examiner indicated that the continuity data in the first sentence of the specification should be updated. In response thereto, Applicants have amended the first paragraph of the specification above to update the status of U.S. Application Serial No. 09/956,418, which is now U.S. Patent No. 6,743,170.

Information Disclosure Statement

The Examiner indicated that the information disclosure statement filed 12/1/2003 (actually, 11/26/2003) had been considered, but that lined through references did not include the required dates. Applicants assume that the lined through references have not been considered. Applicants are not aware of any requirement to list dates on the PTO-1449. Further, Applicants note that the references that were lined through by the Examiner were considered by the Examiner in the parent application, which is now U.S. Patent No. 6,743,170, as they appear on pages 4-5 of the patent. Accordingly, the Examiner is respectfully requested to consider and make of record the lined through references.

Claims Rejected Under 35 U.S.C. Section 102(e) (Sherts et al.)

Claims 115-119 and 123 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Sherts et al., U.S. Patent No. 5,947,896. The Examiner asserted that Sherts et al. teaches a first device 64 and a second device 100. Applicants respectfully submit that neither the device 64 nor the device 100 of Sherts et al. has an engaging portion adapted to engage the heart and a proximal portion configured to be fixed relative to a relatively stationary object, wherein said engaging portion remains movable when said proximal portion is fixed.

Accordingly, in view of the above amendment of claim 115 and the remarks made above, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-119 and 123 under 35 U.S.C. Section 102(e) as being anticipated by Sherts et al., U.S. Patent No. 5,947,896, as being no longer appropriate.

Claims Rejected Under 35 U.S.C. Section 102(e) (Borst et al.)

Claims 115-122 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Borst et al., U.S. Patent No. 5,927,284. The Examiner asserted that Borst et al. discloses a first device 12, a second device 13, a sternal retractor 3 and a suction head 22. Applicants respectfully submit that neither the device 12 nor the device 13 of Borst et al. has an engaging portion adapted to engage the heart and a proximal portion configured to be fixed relative to a relatively stationary object, wherein said engaging portion remains movable when said proximal portion is fixed.

Accordingly, in view of the above amendment of claim 115 and the remarks made above, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-122 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Borst et al., U.S. Patent No. 5,927,284, as being no longer appropriate.

Claims Rejected Under Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,726,622)

Claims 115-123 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,726,622. Although Applicants do not necessarily agree with the Examiner's position and do not acquiesce thereto, Applicants are submitting

herewith a terminal disclaimer in order to obviate this ground of rejection and place the instant application into condition for allowance.

Accordingly, in view of the above remarks and the submission of the terminal disclaimer, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-123 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,726,622, as being moot.

Claims Rejected Under Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,390,976)

Claims 115-123 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-24 of U.S. Patent No. 6,390,976. Although Applicants do not necessarily agree with the Examiner's position and do not acquiesce thereto, Applicants are submitting herewith a terminal disclaimer in order to obviate this ground of rejection and place the instant application into condition for allowance.

Accordingly, in view of the above remarks and the submission of the terminal disclaimer, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-123 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-24 of U.S. Patent No. 6,390,976, as being moot.

Claims Rejected Under Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,361,493)

Claims 115-123 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,361,493. Applicants traverse this ground of rejection. Applicants respectfully submit that U.S. Patent No. 6,361,493 does not have 21 claims and that this ground of rejection is improper for this additional reason. Although Applicants do not necessarily agree with the Examiner's position and do not acquiesce thereto, Applicants are submitting herewith a terminal disclaimer in order to obviate this ground of rejection and place the instant application into condition for allowance.

Accordingly, in view of the above remarks and the submission of the terminal disclaimer, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-123 on the

ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,361,493, as being moot.

Allowable Subject Matter

Applicants wish to extend their thanks to the Examiner for the indicated allowance of claims 77-114.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-024CON9.

Respectfully submitted,

LAW OFFICE OF ALAN W. CANNON

Date: _____

6/20/07

By: _____



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